



COLORADO
**Department of Public
Health & Environment**

Dedicated to protecting and improving the health and environment of the people of Colorado

November 9, 2016

Matthew T. Walsh, Registered Agent
Walsh Construction, Inc.
8139 Open View Place
Loveland, CO 80537

Certified Mail Number: 7014 2870 0000 7568 7653

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-161109-1

Dear Mr. Walsh:

Walsh Construction, Inc. is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act* (the "Act"). The Division bases the NOV/CDO upon findings that Walsh Construction, Inc. has violated the Act and/or a discharge permit issued pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Walsh Construction, Inc. is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.



Should you or representatives of Walsh Construction, Inc. desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact me by phone at (303) 692-3598 or by electronic mail at michael.harris@state.co.us.

Sincerely,



Michael Harris, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

ec: Michael Boeglin, EPA Region VIII
Weld County Department of Public Health & Environment
Aimee Konowal, Watershed Section, CDPHE
Corrina Quintana, Grants and Loans Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Tania Watson, Data Management, CDPHE
Nathan Moore, CW Compliance Unit, CDPHE



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-161109-1

IN THE MATTER OF: WALSH CONSTRUCTION, INC.
CDPS PERMIT NO. COG070000
CERTIFICATION NO. COG075335
WELD COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations identified herein, Walsh Construction, Inc. ("Walsh Construction") was a Colorado corporation in good standing and registered to conduct business in the State of Colorado.
2. Walsh Construction is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Walsh Construction is conducting ditch realignment construction activities associated with the John Law Floodplain project located at or near 40.482 and -104.872, in or near the Town of Windsor, Weld County, Colorado (the "Project").
4. On November 1, 2015, the Division received an application from Walsh Construction for Project coverage under the Colorado Discharge Permit System General Permit, Number COR070000, for Construction Dewatering Discharges (the "Permit"). The current Permit became effective September 1, 2013 and is set to expire on August 31, 2018.
5. On November 19, 2015, the Division provided Walsh Construction with Certification Number COG075335 (the "Certification") authorizing Walsh Construction to discharge treated wastewater from construction dewatering activities associated with the Project through Outfall 001-AU to John Law Ditch under the terms and conditions of the Permit. The Certification became effective November 19, 2015 and remains in effect until August 31, 2018 or until Walsh Construction inactivates permit coverage.



6. John Law Ditch is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).
7. Pursuant to 5 CCR 1002-61, §61.8, Walsh Construction must comply with all the terms and conditions of the Permit, and violations of such terms and conditions may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Comply with Permit Effluent Limitations

8. Pursuant to Part I.B.2. of the Permit, Walsh Construction is required to monitor the effluent discharge for defined pollutant parameters at specified frequencies and report the results of such monitoring on a Discharge Monitoring Report ("DMR") form.
9. Pursuant to Part I.B.2. of the Permit and the Certification, Walsh Construction's permitted discharge at Outfall 001-AU shall not exceed, among others not subject to this action, the effluent parameter limitations specified in the table below:

| Parameter | Discharge Limitations | | | Monitoring Conditions | |
|--------------------------------------|-----------------------|------------|-----------|-----------------------|-------------|
| | 30-day Avg. | 7-Day Avg. | Daily Max | Frequency | Sample Type |
| Total Suspended Solids ("TSS"), mg/l | 30 | 45 | -- | Weekly | Grab |

10. Pursuant to Part I.E.1. of the Permit, Walsh Construction is required to report all monitoring results to the Division on a monthly basis using Division approved DMRs. Each DMR is required to include a certification by Walsh Construction that the information provided therein is true, accurate and complete to the knowledge of Walsh Construction.
11. Walsh Construction's DMRs include, among other information and data, the following pollutant concentration summary data which exceeded the effluent limitations outlined in Part I.B.2. of the Permit and the Certification:

| WALSH CONSTRUCTION, INC.'s EFFLUENT SELF-MONITORING DATA | | | |
|---|--|-------------------|----------------|
| DISCHARGE MONITORING REPORTING PERIOD | SAMPLE MEASUREMENTS FOR OUTFALL 001-AU | | |
| Total Suspended Solids ("TSS"), mg/l | 30-DAY AVG. LIMIT= | 7-DAY AVG. LIMIT= | DAILY MAXIMUM= |
| | 30 | 45 | NA |
| 12/1/2015 - 12/31/2015 | 65.5 | 120 | -- |
| 1/1/2016 - 1/31/2016 | -- | 79 | -- |
| 2/1/2016 - 2/29/2016 | 235 | 810 | -- |
| 4/1/2016 - 4/30/2016 | 78.75 | 200 | -- |
| 5/1/2016 - 5/31/2015 | 50 | 200 | -- |
| 7/1/2016 - 7/31/2016 | 67.5 | 190 | -- |
| 8/1/2016 - 8/31/2016 | 39.25 | 90 | -- |
| 9/1/2016 - 9/30/2016 | -- | 52 | -- |

12. Total Suspended Solids are "pollutants" as defined by §25-8-103(15), C.R.S. and its implementing permit regulation 5 CCR 1002-61, §61.2(76).

13. The Permit and Certification do not authorize the pollutant concentrations identified above in paragraph 11. Division records establish that Walsh Construction did not have any other permit authorizing such discharge into state waters.
14. Walsh Construction's failure to comply with the effluent parameter limitations at the Project constitutes violations of Part I.B.2. of the Permit and the Certification.

NOTICE OF VIOLATION

15. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined Walsh Construction has violated the following sections of the Permit and Certification.

Part I.B.2. of the Permit, which states in part, "In accordance with the Water Quality Control Commission Regulations for Effluent Limitations, Section 62.4, and the Colorado Discharge Permit System Regulations, Section 61.8(2), 5.C.C.R. 1002-61, the permitted discharge shall not contain effluent parameter concentrations which exceed the limitations specified in Table B.1 or B.2 below...", and which limitations are specified in the Certification.

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Walsh Construction is hereby ordered to:

16. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders Walsh Construction to comply with the following specific terms and conditions of this Order:

17. Within 15 calendar days of receipt of this Order, Walsh Construction shall retain the services of an individual or entity experienced in construction dewatering treatment and perform an evaluation of the Project's Best Management Practices and construction dewatering treatment technologies to ensure the Project reliably and consistently complies with all numeric effluent limitations of the Permit and Certification.
18. Within 30 calendar days of receipt of this Order, Walsh Construction shall submit a written report to the Division outlining the findings of the evaluation outlined in paragraph 17 above. Along with the findings of the evaluation, the report shall identify the specific short-term and long-term measures that were taken, or will be taken, by Walsh Construction to ensure the Project consistently meets the numeric limitations outlined in Part I.B.2. of the Permit and the Certification. For any identified corrective measures that are not yet completed at the time of report submittal, Walsh Construction shall submit a time schedule for completion of each measure. The measures and any time schedule submitted shall become a condition of this Order, and Walsh Construction shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.



NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Walsh Construction shall submit an original and an electronic copy to the Division at the following address:

Michael Harris
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-3598
Email: michael.harris@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be

punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

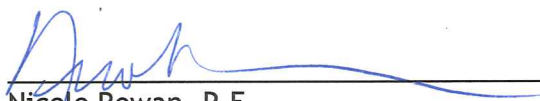
EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 9th day of November 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION